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Attorneys for Plaintiff Lucy Funes

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

12		) Case No. 12-CV-6482-NC
13	LUCY FUNES, Individually, and on behalf	)
14	of all others similarly situated,	)
15		) <b>NOTICE OF RELATED CASE PURSUANT</b>
16	Plaintiff,	) <b>TO CIVIL L.R. 3-12 TO BE FILED IN CASE</b>
17		) <b>NO. 12-CV-6482-NC; ADMINISTRATIVE</b>
18	vs.	) <b>MOTION TO CONSIDER WHETHER</b>
19	INSTAGRAM, INC., a Delaware	) <b>CASES SHOULD BE RELATED,</b>
20	Corporation; and INSTAGRAM, LLC, a	) <b>PURSUANT TO CIVIL L.R. 7-11</b>
21	Delaware LLC	) <u>CLASS ACTION</u>
22		) The Honorable Nathanael M. Cousins
23	Defendants.	)
24		)
25		)
26		)
27		)
28		)

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTE that a related case, *Fraley et al. v. Facebook, Inc.*, was filed on  
3 June 6, 2011 in the United State District Court for the Northern District of California. Pursuant to  
4 Civil Local Rules 3-12(b) and 7-11 of the United States District Court for the Northern District  
5 of California, Lucy Funes submits this Administrative Motion to Consider Whether Cases  
6 Should Be Related.

7 **I. APPLICABLE STANDARD UNDER CIVIL L.R. 3-12**

8 Under Civil Local Rule 3-12, an “action is related to another when: (1) the actions  
9 concern substantially the same parties, property, transaction or event, and (2) it appears likely  
10 that there will be an unduly burdensome duplication of labor and expense or conflicting results if  
11 the cases are conducted before different Judges.” Civil L.R. 3-12(a).

12 Whenever a party knows or believes that an action may be related to an action which is or  
13 was pending in the Northern District, said party “must promptly file in the earliest-filed case an  
14 Administrative Motion to Consider Whether Cases Should be Related, pursuant to Civil L.R. 7-  
15 11.” Civil L.R. 3-12(b). That motion must include: “(1) The title and case number of each  
16 apparently related case; (2) A brief statement of the relationship of the actions according to the  
17 criteria set forth in Civil L.R. 3-12(a).” Civil L.R. 3-12(d).

18 **II. RELATED CASE**

19 On December 21, 2012, Lucy Funes filed a class action lawsuit against Instagram Inc.  
20 and Instagram, LLC (collectively “Instagram”), No. 12-cv-6482-NC, for breach of contract,  
21 declaratory relief, and various violations of California statutory law. Related case *Fraley et al. v.*  
22 *Facebook, Inc.*, No. 11-cv-01726 LHK PSG, is currently before the Honorable Richard Seeborg  
23 in this District.

24 The instant action is related to *Fraley* because Facebook Inc. is the parent company of  
25 Instagram, and the case involves similar wrongful acts and occurrences, namely the  
26 misappropriation of member photographs for commercial purposes. On or around January 25,  
27 2011, Facebook launched a new advertising service called “Sponsored Stories.” This service  
28

1 created online advertisements in which Facebook used its members' photographs and likenesses  
 2 to endorse products and services without members' consent. Similarly, Instagram is currently  
 3 changing their Terms of Use to allow for the same offensive and illegal behavior. Under their  
 4 new Terms of Use, Instagram grants itself an irrevocable "transferable and sub-licensable"  
 5 licence in its members' photographs, including their personal likenesses, which allows Instagram  
 6 to license and commercially exploit these photographs to advertisers without the consent of  
 7 Instagram members. As such, the following similar questions of law and fact exist between  
 8 *Funes* and *Fraley*.:

- 9 • Whether the defendants' commercial exploitation of members' photographs and  
 10 likenesses is a violation of California Civil Code section 3344;
- 11 • Whether defendants' commercial exploitation of members' photographs and  
 12 likenesses is an unfair and/or unlawful business practice under California's Unfair  
 13 Competition Law, CAL. BUS. & PROF. CODE section 17200, *et seq.*;
- 14 • Whether the defendants should be permanently enjoined from engaging in such  
 15 business practices.

16 Accordingly, it appears likely that there will be an unduly burdensome duplication of  
 17 labor and expense or the possibility of conflicting results if the cases proceed before different  
 18 judges. Civil L.R. 3-12(b)(2).

19 ///

20 ///

21 ///

1   **III.   CONCLUSION**

2           As set for above, *Funes* is related to *Fraley*, which is currently before this Court.

3  
4   Dated: December 27, 2012

Respectfully submitted,

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